

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
DAVON LYMON,)	15-CR-4082 MCA
)	
Defendant,)	

**UNITED STATES MOTION TO UNSEAL AUDIO-VISUAL TRIAL EXHIBITS
PREVIOUSLY SEALED BY OCTOBER 27, 2016 SEALING ORDER (DOC.118)**

The United States of America, by its undersigned counsel, respectfully moves this Court for an order unsealing the four audio visual trial exhibits previously sealed by the Court's October 27, 2016 Order Sealing Audio Visual Exhibits (Sealing Order). Doc. 118. In seeking this relief, the United States acknowledges that its position on this motion is inconsistent with the position it took on October 26, 2016, when it requested the Sealing Order. In support of its instant motion, the United States proffers the following:

1. On October 25, 2016, after the parties made their closing arguments during the bench trial on Count 4 of the Indictment in this case, the United States orally moved this Court for an order sealing the four audio-visual exhibits (Government Exhibits 12, 13, 14 and 42) entered into evidence during the Government's case. Specifically, the United States requested that the audio-visual exhibits be sealed "until at least a verdict is rendered, or until the State's case is resolved" in order to preserve the State's case and the ability to empanel an impartial jury

in the event that the State charges the Defendant with the murder of Albuquerque Police Officer Daniel Webster. Transcript¹ of Bench Conference 1:24 to 2:6.

2. The Court granted the United States' oral motion and entered an oral Order after ascertaining that the Defendant's counsel in this federal case and his State defense counsel concurred in the United States' oral motion. *Id.* 2:9 to 3:3.

3. At the Court's direction, the United States submitted a proposed order that was approved by the Defendant's federal counsel, and the Court entered the Sealing Order on October 27, 2016. Doc. 118.

4. Upon reflection, the United States recognizes that its oral motion was overbroad in that it sought relief to which the United States was not entitled. The United States believes that there was a valid federal interest to be served by sealing the audio-visual exhibits, which were already part of the public record, until the Court rendered its verdict. However, it cannot identify any legally supportable federal interest served by maintaining public record information under seal to safeguard State proceedings that have yet to be initiated.

5. Also on further reflection, the United States now recognizes that it lacked standing to request that the audio-visual exhibits be sealed to protect any related-State proceedings that may be initiated in the future. The United States respectfully submits that the interests implicated by this matter are those of the Defendant and the State, which is not a party to this case.

6. Defense counsel for Mr. Lymon take no position in this motion.

¹ A seven-page transcript will be submitted to Court's Chambers.

7. The United States has notified the New Mexico Attorney General's Office of its intention to file this motion in the event that that office wishes to seek intervention to protect its interest.

For these reasons, the Government respectfully seeks an order of this Court that unseals the audio-visual exhibits currently sealed by the Court's October 27, 2016 Sealing Order. The United States further requests that the Court schedule a prompt hearing on the instant motion.

Respectfully submitted,

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Filed Electronically
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I HEREBY CERTIFY that a true copy of this pleading was sent to counsel for Defendant this 31st day of October, 2016.

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